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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

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11 DERRICK HILL,

No. 2:24-CV-1607-DMC-P

12 Plaintiff,

13 v.

ORDER

14 CALIFORNIA DEPARTMENT OF
15 CORRECTION,

16 Defendant.

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18 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
19 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

20 The Court is required to screen complaints brought by prisoners seeking relief
21 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.
22 § 1915A(a). This provision also applies if the plaintiff was incarcerated at the time the action was
23 initiated even if the litigant was subsequently released from custody. See *Olivas v. Nevada ex rel.*
24 *Dep't of Corr.*, 856 F.3d 1281, 1282 (9th Cir. 2017). The Court must dismiss a complaint or
25 portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can
26 be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See
27 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that
28 complaints contain a “... short and plain statement of the claim showing that the pleader is

1 entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply,
2 concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to
3 Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice
4 of the plaintiff’s claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121,
5 1129 (9th Cir. 1996). Because Plaintiff must allege with at least some degree of particularity
6 overt acts by specific defendants which support the claims, vague and conclusory allegations fail
7 to satisfy this standard. Additionally, it is impossible for the Court to conduct the screening
8 required by law when the allegations are vague and conclusory.

9 Plaintiff names “California Department of Correction,” presumably referring to the
10 California Department of Corrections and Rehabilitation, as the sole defendant. ECF No. 1, pg. 1.
11 Plaintiff alleges that he was injured by unnamed “Correctional Officers” at California State Prison
– Sacramento. Id. It does not appear that Plaintiff seeks injunctive relief by way of this action.

12 Plaintiff’s complaint must be dismissed because the only named defendant is
13 immune from suit. The Eleventh Amendment prohibits federal courts from hearing suits brought
14 against a state both by its own citizens, as well as by citizens of other states. See Brooks v.
15 Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition
16 extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep’t
17 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th
18 Cir. 1989). A state’s agency responsible for incarceration and correction of prisoners is a state
19 agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 782
20 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en banc).

21 Here, the only named defendant – the California Department of Corrections and
22 Rehabilitation, erroneously sued as “California Department of Correction” – is the state agency
23 responsible for incarceration and correction and, as such, is immune from suit under the Eleventh
24 Amendment.

25 The Court notes that Plaintiff is claiming he was injured by correctional officers.
26 To the extent Plaintiff can identify those individuals, Plaintiff will be provided an opportunity to
27 file an amended complaint to do so.

1 Because it is possible that the deficiencies identified in this order may be cured by
2 amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire
3 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
4 informed that, as a general rule, an amended complaint supersedes the original complaint. See
5 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
6 amend, all claims alleged in the original complaint which are not alleged in the amended
7 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
8 Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make
9 Plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be
10 complete in itself without reference to any prior pleading. See id.

11 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the
12 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See
13 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
14 each named defendant is involved and must set forth some affirmative link or connection between
15 each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167
16 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

17 Finally, Plaintiff is warned that failure to file an amended complaint within the
18 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
19 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
20 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
21 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

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1 Accordingly, IT IS HEREBY ORDERED as follows:

2 1. Plaintiff's original complaint is dismissed with leave to amend.

3 2. Plaintiff shall file a first amended complaint within 30 days of the date of

4 service of this order.

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6 **Dated: June 17, 2024**

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DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE